John Zebrowski: John or Jack Zebrowski, Z-e-b-r-o-w-s-k-i.

Roger Boren: And I'm Roger Boren, and the last name is spelled B-o-r-e-n.

David Knight: All right, I have an audio level, so whenever you're ready, Justice Boren.

Roger Boren: All right. We're here in my chambers at the Court of Appeal in Los Angeles with I'll call him Jack Zebrowski, who used to be my colleague here and is now a practitioner of the art of ADR in southern California especially, I guess. I'm going to ask you in a little bit how far afield you roam on that. He was here about four years from . . . what? Tell us the years you were here.

John Zebrowski: I was here from about mid-'95 to late '99, so a little over four years.

Roger Boren: Right. As I see it, you left here in November of '99 . . .

John Zebrowski: Correct.

Roger Boren: . . . and so it was at least four years . . .

John Zebrowski: Right.

Roger Boren: . . . if not maybe a few days beyond that. But about that. We're doing this interview as part of the Legacy Project. That project was started at the Court's 100th anniversary, and all retired justices of the Court of Appeal, it was thought, would be interviewed, and we would discuss with them their careers and especially their . . . with a focus on the Court of Appeal service. And the idea would be that we'd have a legacy that's left behind of what has been going on in the Court of Appeal over the years, and also as to the people who were the justices here. I've been told that some of the DVDs or the CDs or whatever of these interviews have been glommed onto by law school and other people. So we perhaps need to be careful what we say!

So let's start by just getting some kind of general framework. You're from the state of Pennsylvania?

John Zebrowski: From western Pennsylvania, right.

Roger Boren: Oh, you're more specific, then: western Pennsylvania.

John Zebrowski: Well, you know, Pennsylvania is a state that was put together because of history, not because of geographic considerations. So there's . . . . The Appalachian Mountains goes right through the center of it, so eastern Pennsylvania is a bit different than western Pennsylvania.

Roger Boren: But you went to university in *eastern* Pennsylvania, didn't you? 2:24

John Zebrowski: Right. I grew up near Pittsburgh, but I went to school in Philadelphia.

Roger Boren: Okay. University of Pennsylvania?

John Zebrowski: Right.

Roger Boren: Okay. And without going . . . . We don't need to go into the dates, but you're about, what, 62 years old?

John Zebrowski: That's right.

Roger Boren: Okay, got that right. Where did you go to law school?

John Zebrowski: Georgetown, in Washington.

Roger Boren: And what year did you graduate from Georgetown?

John Zebrowski: '75.

Roger Boren: Okay. Did you practice anywhere before you came to California – law?

John Zebrowski: Well, not exactly. I worked for the Department of Interior while I was *in* law school . . .

Roger Boren: Okay.

John Zebrowski: . . . doing legal work there – but not as a lawyer, more as a legislative analyst. And then when I graduated from Georgetown, I came out to California to begin practicing law.

Roger Boren: What brought you to California?

John Zebrowski: Well, I was looking to practice in a large metropolitan area, and so I considered a number of 'em. I had some relatives that lived out here – a couple of aunts and uncles, and some cousins. And I looked at a couple of different places and decided Los Angeles looked pretty good to me at that time and I came out.

Roger Boren: And apparently it was a good choice, then, for you – do you think?

John Zebrowski: I think so. Los Angeles has been pretty good to me. California generally has been pretty good to me.

Roger Boren: Let me ask you a little thing that maybe backs up into your career before you got to California, and that is, you have a number of publications. Did you publish anything, either 3:43

in law school, as law review, or anything else, prior to coming to California?

John Zebrowski: Well, when I was on the law journal – at Georgetown they called it the law journal rather than law review, for some reason – but when I was on the law journal there, every student had to write a note for the law journal. And I had spent a good bit of time working in the steel mills during my college years back around Pittsburgh. And when I was working in the steel mills was before the Occupational Safety and Health Act. And I saw a lot of people get hurt. And they didn't have nearly the safeguards they should have had at that time. And early – it might have been right before I started law school, or right about the time I started law school – the Occupational Safety and Health Act was passed. So that interested me because of my past experience working in the mills. And so I wrote an article about the Occupational Safety and Health Act shortly after it had been enacted and it was in its early years. And so that article ended up getting cited by the Occupational Safety and Health Review Commission – it was an administrative court type of an agency – and also a couple of times by some of the federal circuit courts. And I think it was primarily because the Occupational Safety and Health Act was so new that nobody had written anything about it. So when these issues started percolating up to the courts and to the Review Commission, and they started looking for literature about it, my article was about all they were finding. So I was cited.

Roger Boren: Well, would it be fair to say that you're probably viewed as somebody who has a . . . some specialty in the law with regard to business and things like . . . related to that, like employment law or OSHA and other things like . . . that nature?

John Zebrowski: Well, I've always done business-related work primarily: contracts, insurance, and real estate, that type of thing. That's pretty much what I do now.

Roger Boren: Would you describe any one of those as more special to you than any other area of business-related law?

John Zebrowski: Well, I wouldn't say that I'm highly specialized, but because I handle all types of business matters, from . . . . Most business matters involve contracts of one kind or another, and sometimes there are corporate control disputes or partnership LLP control disputes. Or I get a lot of insurance coverage, insurance allocation and equitable allocation types of issues. Here in Los Angeles, of course, we have a large entertainment industry, so you get a lot of entertainment cases, which are . . . . . Most entertainment cases are basically contract cases. Sometimes they have a little bit of intellectual property overlaid, but usually that's not a lot of what the issues 6:22

are; they're usually contract cases. And I did all kinds of cases of that kind.

Roger Boren: I wanted to ask you a little bit about your practice of civil law. How many years did you practice that in Los Angeles?

John Zebrowski: I practiced out here with . . . for seven years before becoming a court commissioner.

Roger Boren: Okay, so about that long. Would you say that . . . . Was all of that basically in business-related areas?

John Zebrowski: Yes.

Roger Boren: Okay.

John Zebrowski: Right.

Roger Boren: And you became a commissioner . . .

John Zebrowski: Right.

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Roger Boren: . . . of the Los Angeles Superior Court.

John Zebrowski: Right.

Roger Boren: And that was in 19 . . . that was in '80, 1982? Would that be about right? I have a note here that says December 1982.

John Zebrowski: It was . . . . Yeah, it was right . . . . It was either late '82 or early '83, right around there.

Roger Boren: And you were a commissioner until October of 1986. Would that be about right?

John Zebrowski: That sounds right.

Roger Boren: Okay. I was going to ask you. As a commissioner, did you . . . . Some of 'em were more general and some of 'em rather had specific assignments. What kind of assignments – assignment *or* assignments – did you have as a commissioner?

John Zebrowski: Well, when I started, the first thing I started doing was trying jury trials. But I only did that for a short while before I got transferred into law and motion. This was back in the master calendar days, when you had those large law-and-motion calendars all concentrated in a few departments up on the 8th floor, and so there was me and about four or five judges doing all the law-and-motion calendars. And so I did a law-and-motion calendar there most of the time that I was a commissioner. 7:54

Roger Boren: Okay. And at some point you – well, it would have been October 1986 – you became a superior court judge.

John Zebrowski: Right.

Roger Boren: Was that by appointment of the Governor?

John Zebrowski: Correct.

Roger Boren: And which Governor was that?

John Zebrowski: Governor Deukmejian.

Roger Boren: Okay. So 1986 in October you come to the . . . you're already there, but now you change your nomenclature, so to speak and . . .

John Zebrowski: Yeah, well . . . .

Roger Boren: . . . you're a superior court judge. How long did you practice as a superior court judge?

John Zebrowski: Well, the first . . . . Let's see. Well, I was a superior court judge until about '95, I guess, until I got appointed to the Court of Appeal.

Roger Boren: And that would have been in October of '95, then, I think, according to my notes.

John Zebrowski: I believe so, right.

Roger Boren: Okay. As a superior court judge, did you kind of stay in the same kind of law-and-motion area that you'd been in before, or did you . . . .

John Zebrowski: Well, the first thing that happened was I got appointed, so I walked from the 8th floor down to Department One, and of course they already knew it because they are advised. And so I walked in there, and so they swore me in and they gave me another little plaque to put on the bench. And I just changed the plaque from one that said "Commissioner" to one that said "Judge," and just went back and kept doing the same thing I'd been doing.

Roger Boren: In the same courtroom?

John Zebrowski: In the same courtroom and just did everything the same for a month or two. And then . . . . This was back at the time when we had the long delays until trial; everything was taking five years to get to trial.

Roger Boren: Yeah. 9:23

John Zebrowski: And nobody could get cases to trial anywhere. And for some reason – as far as I can tell, it's lost in political antiquity – there was a seven-story courthouse built down in Norwalk.

Roger Boren: Oh, yes.

John Zebrowski: I'm not really sure why they built such a big courthouse down in Norwalk. It didn't seem like it was really needed. But for some reason a seven-story courthouse was built in Norwalk, and so they had empty courtrooms there. And they had cases they just couldn't get to trial. So they sent me down to Norwalk, and then they just started sending me cases from all around the county. Probably less than half of them actually came from the Norwalk district. I would get cases from Santa Monica and Van Nuys and Long Beach and San Fernando and some from downtown. And they would just send them down there to try jury trials, and I just started trying jury trials, one after another.

Roger Boren: Were these all civil or business, or would they include criminal? What was the mix?

John Zebrowski: Well, they had me in a department that in the Norwalk practice it was called a general trial department, which meant basically you were handling civil cases. But if they needed you to, you'd try a criminal case. And once in a while I'd try a family law case or even a probate case. But probably 80 percent of it was general civil cases, and then a mixture of other things.

Roger Boren: It seems like part of your activities as superior court judge *may* have included – I didn't catch the dates – but you also worked as an adjunct professor of law for a period of time.

John Zebrowski: I spent about . . . . Well, it was an evening class, one class a year, for about six or seven years at Loyola. I taught a class in what was called Advanced Civil Procedure. So it was for students who had already gone through their first year of law school – maybe through their second year – but they'd already had basic civil procedure and tort law and contract law, and so they had all those basics. And I would basically teach them how to actually handle a case in the L.A. Superior Court or in the local federal court, and teach them how the rules worked, and if you had a certain fact pattern, what kind of a procedure would you look to use. And the idea was to make sure that they would at least know where to start when they confronted a problem when they were out in practice.

Roger Boren: Was there anything in particular that caused you to leave the civil practice – private practice – and enter into a judicial career? What attracted you that way? 11:39

John Zebrowski: Well, I was just thinking maybe "attract" is not the right word, although it wasn't that it wasn't attractive. But that's just not how it happened.

Roger Boren: Well, why don't you tell us about that.

John Zebrowski: Well, the way it happened was I had a . . . I worked for a client, a . . . named USA Petroleum, which was a client that I worked for when I was in private practice. And one of the older partners in the firm decided he was going to leave private practice and become the general counsel of USA Petroleum. So he did that, and he told me that his deal was that since he was getting near retirement, he was supposed to find a younger guy to bring along to teach the business to, and then the younger guy within a few years would take over as general counsel of USA Petroleum. So it seemed like a very good opportunity, so I did that. And like sometimes happens in life, the economy didn't cooperate very much. And we had a number of problems there, and the company started having financial difficulties, and we started trying to work out a merger in order to solve the financial difficulties. The merger then led to a big dispute, and lawsuits were filed over that. I was actually personally named as a defendant in those lawsuits, but people involved in the merger, I don't think they practically expected to get much money from me. What they really wanted from me was, because I was the secretary, they wanted me to sign over the stock certificates in order to complete the merger; they were trying to get specific performance of the merger. But . . . .

Roger Boren: So which came first, judicial career or signing over the stock certificates?

John Zebrowski: Well, what happened was this company was going into a lot of turmoil. And I was thinking I was going to try to wait it out and see if everything would stabilize. And then the finance guys started leaving. And when the finance guys started leaving, I thought, "Well, now, they're the ones that know whether this company is going to survive or not." So I started thinking, "Well, I think I'll have to go back into private practice." So I started looking a little bit to go back into private practice. And right about then was when this opportunity came up to become a court commissioner.

Roger Boren: How did it come up?

John Zebrowski: Well, that's a bit of a long story, too. I was at lunch one day with a number of guys that I was working with. And one of them pulled out a clipping that he got from the *Daily Journal*. And the superior court was – this was back when I was in practice –

Roger Boren: Yeah. 14:06

John Zebrowski: . . . looking for court commissioners. And it said in there that you had to be admitted to the bar for at least five years in order to be minimally eligible to be a court commissioner. And so he hands it to me and says, "You ought to look into this. I can't look into it 'cause I've only been admitted for three or four years, but you've been admitted for more than five years, so you could look into it." So I looked at it and then I said, "Well, you know, court commissioners are generally assigned to do family law and juvenile and that type of thing, and I don't have anything against that but that's just not really my career path. It's not what I'm most interested in, so I don't really think it would really be a good career move for me to become a commissioner." And so this buddy of mine that I was having lunch with proceeded to give me this lecture about how that was a really bad attitude, and I should give it a try and I'll meet some people and I'll learn a few things, they're never going to offer me the job anyway, and it would just be a bit of a learning experience. So after he gave me his lecture, I said, "Oh, all right, fine; you're right. So I'll do it."

So I took the ad, and I called down, I got a copy of the application, and it was a big long application on about 16-inch-long paper. And then it folded out twice. So the thing was about four feet long. And I was real busy at the time, so I folded it up, I put it in my desk drawer, and basically forgot about it. And it had . . . . In bold right on the front it said you have to send it in by a certain date or it won't be considered, etcetera etcetera etcetera. So I put it in my drawer and I just turned to other things and I never sent it in. And a couple of weeks went by and . . . a couple of weeks after the deadline went by and I got a call from the superior court – somebody in the personnel office saying that well, there's this committee of superior court judges that are involved in selecting court commissioners. And they saw my name on some list of people that had received applications, and so they asked to see my application. And the fellow on the phone is telling me and saying, "We can't find it." And so I said, "Well, you can't find it because I never sent it to you." So, he says, "Well, the . . . will you please send it in?" And I said, "Well, we're way past the deadline," and he said, "Don't worry about the deadline; just go ahead and send it in." So I said, "All right, I'll think about it." So I thought about it, and being younger and a little more naïve, maybe, than I became later, the thought occurred to me that maybe these judges would be upset with me if I didn't send in this form because they specifically asked for it. Now, I realize now, today, they probably wouldn't have cared. But at the time, I thought, well, I don't want to antagonize anybody. So I filled it out and I sent it in.

And then I went through this long process, which was interviews and written tests and oral tests. And it was all about things I didn't know much about: family law and juvenile. So we got to the end of the process, and they had money to 16:55

hire 10 commissioners. And so they offered . . . they ranked people in order of preference, apparently. And then they made offers to the first 10. And the first 10 all accepted. And so I wasn't one of those, and so I thought, well, that was an interesting experience just like my friend said it would be, but that's kind of the end of it. So then I went on about my way, and then a couple of . . . maybe like a year and a half or so later I'm at the oil company, which is starting to come unglued beneath my feet there, thinking I'm going to have to make a move. And the telephone rings and it's this same fellow from the personnel department down at the superior court, and he says Dave Eagleson wants to talk with me 'cause he wants to appoint me to be a court commissioner. Well, it turned out they ranked the top 25 people, and I was ranked number 11th out of the 25, which I thought was pretty good considering that I didn't know anything about family law or juvenile law and there were about three or four hundred applicants. And so all this time, apparently, I had been number one on that list without knowing it. And when they got some funding to hire a new court commissioner, I'm the next guy on the list. So they . . . so Dave Eagleson wants to talk with me. So I went down and talked with Dave Eagleson and Harry Peetris . . . .

Roger Boren: Dave Eagleson was the one who . . . was he then presiding justice . . . judge?

John Zebrowski: He was the PJ at the time, and Harry Peetris was the assistant PJ at the time.

Roger Boren: We should mention that he later went to the Court of Appeal, Division Five, and then to the Supreme Court.

John Zebrowski: Right. Yeah. So I talked with Eagleson and Peetris, and I made a deal with them that I would become a court commissioner and they'd assign me to the main downtown courthouse to hear civil cases. And so I thought, well, it sounds like that would be a good learning experience, and I'll meet people and get to know some things. And so I kind of mentally said to myself, "I'm going to have to make a move anyway; I was thinking of going back into practice. So this would be a little detour. I'll do this for about three years, and then I'll go back into practice." And then I ended up staying with the court system for 17 years instead of three years. So it just goes to show you, you like to think you're planning your life, but really you're reacting to events.

Roger Boren: I find that very interesting. When you came to the Court of Appeal in 19, what, 95 . . . .

John Zebrowski: '95, right.

Roger Boren: 1995 you came to Second District, Division Two, which is this division . . . 19:13

John Zebrowski: Right.

Roger Boren: . . . in this district. I'll just . . . . I'll throw in an aside. I got a phone call from the Chief Justice – the current one, soon to be retired – who told me that I was a very lucky man and that we were . . . Division Two was very fortunate to get you.

John Zebrowski: Oh, that was nice of him.

Roger Boren: I just wanted you to know that. I thought that was . . . . He didn't do that with everybody that came to me, to this court, so I was happy to learn that. When you came to the Court of Appeal, do you remember who your colleagues were then, besides myself, as I was here when you came.

John Zebrowski: Oh, it was Mike Nott and Morio Fukuta, right?

Roger Boren: Okay. And you replaced, I believe, Don Gates.

John Zebrowski: Right.

Roger Boren: Is that correct? Okay. While you were here, did one . . . any one of those retire, do you remember?

John Zebrowski: I think Morio retired pretty close to the same time I retired.

Roger Boren: Yeah, he did, very shortly before you retired.

John Zebrowski: Right, right.

Roger Boren: He did. And I checked on the thing; I actually checked up on this. But he had some things I had, that Candy Cooper was appointed to replace him, and so . . .

John Zebrowski: Right, yeah.

Roger Boren: . . . she was listed as being here for at least a month or so while you were here.

John Zebrowski: Right. That's about right, yeah.

Roger Boren: Would that be about right? And then do you remember who replaced you when you finally retired from the Court of Appeal?

John Zebrowski: I think it was Kathy Todd.

Roger Boren: Yes.

John Zebrowski: Right.

Roger Boren: And she's still here. 20:41

John Zebrowski: Right.

Roger Boren: Yeah. Okay, well, I just kind of wanted to put it into perspective that way. I wanted to ask you some other questions that relate to your activity here on the Court of Appeal. And I . . . one question I'm going to ask you a little later, but I just . . . in case you have a few moments in your brain and you want to multitask, I'm going to ask you about people that in your lifetime were important role models for you, or points . . . persons of inspiration, or mentors. And that's going to be one of the last questions. But as you go through this . . .

John Zebrowski: Okay.

Roger Boren: . . . as I ask some questions, you might be also thinking about that. The first question I wanted to ask you is you had probably over 40 published opinions that you were the author on while you were here at the Court of Appeal. That would be a fair amount, wouldn't it, probably?

John Zebrowski: That's about right, I think.

Roger Boren: Okay. Is there any one – or you know, if there's two or three it wouldn't matter, if you wanted to do that – that you think are the most significant of the published opinions that you authored?

John Zebrowski: Well, it's always a tricky business to try to pick the most significant, because it's always depending upon what criteria you're going to apply, and of course they're all important to the people who are involved in them.

Roger Boren: Yeah.

John Zebrowski: Some of them have a little broader impact than others do. I don't know that I could say any was more important than any other. I think probably . . . .

Roger Boren: No, I'm thinking of the broader impact.

John Zebrowski: I guess one that had a broader impact was . . . . There was an employment case that had to do with whether an employee can sue their supervisor for age discrimination.

Roger Boren: Would that be *Janken?*

John Zebrowski: That was *Janken,* right. And that was a case that I thought had some broad implications. And it was interesting how people looked at that, too, because it really was a situation where you had two employees on . . . and they were on opposite sides of the issue. One employee was a nonsupervisory employee and one employee was a supervisory employee. But the 22:45

mere fact you had a supervisory employee didn't mean they were a big powerful corporation. It was still just an individual trying to do their job. And it was interesting how that played out in the . . . in a debate in the Bar, because a lot of people I saw tried to characterize that decision as a pro-business or pro–big corporation kind of a ruling, when the real issue there is a person who's supervising three or four other people putting their . . . all their assets and their home and everything else on the line when they're trying to do their job. And ultimately that's the way it came out. I mean, the Supreme Court ultimately adopted that view and it's been adopted pretty well around the country.

Roger Boren: Yeah.

John Zebrowski: Yeah.

Roger Boren: Well, I'm proud to say that I was one of the people assigned that . . . .

John Zebrowski: Right. But do you remember . . . . You may remember we got a lot of grief about that one.

Roger Boren: Yes, I do remember that. Morio Fukuto . . .

John Zebrowski: Yeah.

Roger Boren: . . . who is deceased, is the other . . .

John Zebrowski: Right.

Roger Boren: . . . participant on that case. Was there any nonpublished opinion that you have in your . . . that you have . . . might have in mind that you think is worth mentioning, either because it was interesting or because it was significant? And I don't mean to limit that to one if there's . . .

John Zebrowski: Yeah.

Roger Boren: . . . more than one that you want to cite.

John Zebrowski: Well, we had a lot of interesting cases; I found a lot of the cases to be interesting. I'm having a hard time thinking of any that we decided not to publish that were particularly momentous, because normally if we thought it was, we would have published it, but . . . .

Roger Boren: Unless it had such twisted facts that that may be interesting.

John Zebrowski: Well, that would happen sometimes. If it was so idiosyncratic that it didn't seem it would have much application, then we wouldn't publish it. But we had a lot of interesting cases coming through here. 24:29

Roger Boren: Any dissents that you authored that may have . . . . We all have dissents from time to time, and we still have them from time to time. Is there one that kind of stands out in your mind that . . .

John Zebrowski: Well, I . . . .

Roger Boren: . . . where you took a stand that was contrary to your colleagues?

John Zebrowski: Well, I remember once we had a case where a . . . . You know, thinking about it, everybody would voice their opinion but we would usually come to some consensus. So we didn't have a real high . . .

Roger Boren: No.

John Zebrowski: . . . dissent rate.

Roger Boren: We never have in this division.

John Zebrowski: But we, you know, had maybe a couple every year, I guess, maybe. Not a lot.

Roger Boren: Sometimes there's an agreed dissent, you know.

John Zebrowski: Yeah, right.

Roger Boren: You need one sometimes, because it's a cutting issue.

John Zebrowski: But I remember one once where a . . . there was a corporation that had an insurance policy. And then the corporation sold all their assets to a partnership. And then the partnership went on, and it was pretty much bought out by, I think, people who were executives at the corporation. But they sold all their assets to a partnership. And I'm pretty sure that it was some sort of a tax deal to reorganize to . . . . Sometimes if you sell all your assets to a dissimilar entity you can, for example, bring in a LIFO Reserve without paying taxes on it. And there are all kinds of things like that that go into it. And it was some kind of a deal like that. So now we ended up with the partnership, which is a different entity. And years go by, and now there's a lawsuit over a diesel fuel line that was leaking. And the corporation is now defunct, but under Supreme Court precedent you can still sue that defunct corporation. Now, you might say, "Why would anybody ever want to do that?" Well, the only reason they would want to do it is because it had an insurance policy. So you can still sue the defunct corporation and access that insurance policy. But what the plaintiffs in the case at hand did was instead they sued the partnership. And then the partnership tries to get coverage from that policy that sued the corporation, which is still liable to have to respond for 26:30

the corporation and defend the corporation and pay damages and so forth. And they never . . . . And the policy never insured the partnership. And it seemed to me that the only reason why the suit was filed against the partnership instead of the corporation had nothing to do with the merits of anything. What it had to do with is if the corporation had been sued . . . . 'Cause the partnership was . . . . The attorneys representing the partnership were trying to get coverage for the partnership. So they sued the insurance company instead of suing the corporation. And I think the reason they did that, if they had sued the corporation, the insurance company would have said, "Fine, we're going to defend, but you're not the attorney anymore; we're going to put our *own* attorneys in there now." And they wanted to continue to be the attorneys. So they sued the insurance company rather than suing the insured, which was the corporation, cross-claiming against them. And I think Mallano was on that case. And in any event, the . . . .

Roger Boren: Robert Mallano was sitting here as a pro tem at . . .

John Zebrowski: Right.

Roger Boren: . . . that time. He is now the Presiding Judge . . .

John Zebrowski: Right.

Roger Boren: . . . of Division One.

John Zebrowski: Right. And so he wrote the majority opinion. And he followed the line of reasoning that is used sometimes in products liability cases, where if you . . . if you're manufacturing a product but you change the business structure of the manufacturing but the manufacturing goes on unimpeded, the liability will follow the way the manufacturing's going and there'll be findings that the same insurance policy applies, and so on and so forth. But I found that line of reasoning not suitable for this particular situation, because you still had this defunct corporation out there that could be sued. So I wrote a dissent on that, and I said I thought that the insurance company should not have been ordered to provide a defense and indemnity to a party that they never insured – especially because they could still have to defend the corporation when the corporation got sued. But anyway, I was in the minority on that one.

Roger Boren: Okay. Let's see. There's some other questions. Do you recall who was on your chambers staff while you were here?

John Zebrowski: Well, we had Steve . . . . Steve McCall was my judicial secretary.

Roger Boren: You brought him over from the superior court, didn't you? 28:43

John Zebrowski: Right. Yeah. Yeah, he was my clerk on the superior court for about 12 years, and then I was over here for about a year and then he came over, too.

Roger Boren: And he's . . . last I looked, he was still here in another division.

John Zebrowski: Right. I think he *is* still here, right.

Roger Boren: Yeah.

John Zebrowski: Might be Division Eight, I think, or . . . .

Roger Boren: Yes, Division Eight. That's where he is.

John Zebrowski: Yeah. Right. Yeah. And then I had . . . Rosalyn Zakheim was one of my research attorneys. Mary Lawrence was a research attorney for a while. And then there was some juggling around. I think Mary moved over to work with Mike Nott, and then I got Tim Stone, who was here for a while. Those are the people I recall.

Roger Boren: Yeah, that's who I recall.

John Zebrowski: Yeah.

Roger Boren: Pretty good. Is there an experience or anything that happened while you were a Court of Appeal associate justice that kind of stands out in your mind if you were kind of . . . just to characterize your comings and goings during that time?

John Zebrowski: Well, I don't know if I could pinpoint it on one particular experience, but . . . . Well, anytime you do judicial work, you know that your decisions are going to have an impact on people, and it's quite a responsibility and you have to take it quite seriously. And so that's something you have to think about soberly when you're doing it. And then as you move from the trial court to the Court of Appeal, now you're not just deciding one particular case but you're making a decision that can impact on a broad spectrum of people. So it's something you have to remind yourself; it's serious business, and you have to take it seriously and think carefully about it.

Roger Boren: Do you have a fondest memory of anything in particular from the Court of Appeal? I assume there must be some fondness there?

John Zebrowski: Well, I think . . . . Oh, absolutely. The thing I liked about the Court of Appeal is all of us got along so well. We didn't always agree on everything, but we got along really well and we'd go out every week down to the seafood place down the street here and have that . . . have those great seafood lunches.

Roger Boren: Yeah. 30:38

John Zebrowski: Yeah, that was a lot of fun.

Roger Boren: We still do.

John Zebrowski: Do you?

Roger Boren: I was going to ask you – is there anything about the way that you . . . the experience that you had here at the Court of Appeal that has kind of stayed with you? Something that happened, your way of dealing with things, anything like that?

John Zebrowski: Yeah, I would say so. I think that there were times when you would write something and then you would see how it was being interpreted by other people, and it would teach you a little bit about how to say things so that what you're saying can't be misinterpreted, either deliberately or inadvertently. Because there *would* be times when I would write something and then I would see how somebody else saw that, either because maybe I hadn't written it quite as well as I should have or because maybe there had been some prejudice to bear on it and I should have written it in such a way as to eliminate that possibility. And so I think it teaches you a lot to see how people react to what you're writing, and it helps you be more careful how you explain things.

Roger Boren: If you were to . . . . If you look back at the timing of all of your career, from the time you left law school to now, it looks like it's been 11 years since you were here at the Court of Appeal, I think.

John Zebrowski: That's right.

Roger Boren: About 11 years.

John Zebrowski: About 11 years, right.

Roger Boren: So I guess I could say that – and *you* could say – that the longest that you've served in any capacity has been in ADR. Would that be correct?

John Zebrowski: Well, I think I was on the superior court a little bit longer, but . . . .

Roger Boren: It was that long?

John Zebrowski: Yeah. Well, I was on the superior court from about '82 . . .

Roger Boren: Oh, yeah. That's right.

John Zebrowski: . . . to '95, yeah.

Roger Boren: That's true, that's true . . . 32:27

John Zebrowski: Yeah.

Roger Boren: . . . if you count the . . .

John Zebrowski: Right.

Roger Boren: . . . time as commissioner . . .

John Zebrowski: Right.

Roger Boren: . . . and then superior court judge.

John Zebrowski: But I've been doing ADR almost as long as I was on the superior court, right.

Roger Boren: Yeah, yeah. Is there something that you remained interested in because of your background in . . . that's in a judicial or legal effect that is not in the spectrum of business-related activity?

John Zebrowski: You mean, some area of law?

Roger Boren: Yeah, any other areas of law that you're interested in?

John Zebrowski: Well, there's one area of law that always interested me was – and this is sort of an "Inside baseball" kind of thing, I guess – but I always found inverse condemnation law very interesting. And that's an area in which there's a lot of differences of opinion and confusion, and you're never quite sure what's going to happen on an inverse condemnation case.

Roger Boren: Yeah.

John Zebrowski: And it's interesting, too, when you look back into history and you see what used to happen before the Supreme Court developed the inverse condemnation concept. I was reading a book recently, which is a great book. It's called *Rising Tide,* and it was about the Great Mississippi River Flood in 1927. And it's a very interesting book, because it tells you all about the science of trying to control the river and the levees, and how they tried to maintain the river under control, and the problems they have in places like New Orleans and places like that. And also it tells you a lot about the politics of that time in American history, and race relations in the south, and how Herbert Hoover came to become President by him getting involved in this big disaster that was happening there. But one of the interesting things that was happening was as the water was rising, the City of New Orleans became concerned that the levees would break and the City of New Orleans would be flooded. So with the assistance of army troops, they went to the levees south of the City of New Orleans and they dynamited the levees. And they wiped out a couple of parishes in southern Louisiana on the theory that that would release 34:26

the pressure of the water; the water would then go past New Orleans, flood downstream. And they wiped out people's farms and homes, and it was just a major disaster. And the City of New Orleans did it with the assistance of the army, and there was no compensation. Now, nowadays that would be an inverse condemnation case.

Roger Boren: Yeah. Bob Dylan wrote a song – or sung a song more recently as his voice has got older and foggier – called "If the River Keeps . . . If It Keeps on Rainin,' the Levee's Gonna Break." In that case, I guess they took care of the rain part by blowing it up so . . . .

John Zebrowski: Yeah. And they actually had to go down there with army troops, because the local people otherwise are going to try to stop them from blowing up the levees. And, you know, we had some cases similar to that here in California after the earthquake. In '94, '95 there were some buildings out on the west side of town that were damaged and contained some valuable property like medical records and things like that. And so there were a lot of issues about whether you got to go in there and try to get your property out of there, or whether they . . . the city could keep you out of the property and tear it down. And they did tear down a lot of buildings; a lot of people lost records and all sorts of things. And then there were arguments about, well, were they really tearing it down because it was a public safety issue, or were they tearing it down because it was just the most convenient thing to do at that point rather than to have a longer process of letting people remove property. And there were a lot of inverse condemnation cases filed arising out of that.

Roger Boren: Okay. I wanted to ask you a couple of diverse questions – just really more matters of interest. But I believe you had two children?

John Zebrowski: Three. Three children.

Roger Boren: Three?

John Zebrowski: Right.

Roger Boren: Ah, then I messed that up. Tell us how they're doing.

John Zebrowski: Well, the oldest one is just about to graduate. She went to undergrad school back east and then went out to Colorado to go to grad school, so she's going to be graduating with a dual J.D. and environmental studies degree – wants to do environmental work of some kind. The . . . . My other daughter, who's a couple of years younger, graduated from college with a psychology degree, and she's now working for the Autism Research Institute at the University of Washington – Seattle. And she has in mind to go into a graduate 36:49

program in psychology at some point, but first she wants to work for awhile and learn a little bit and develop her credentials and so forth. And then my son is in college. He just got back from about nine months overseas, and he's going to be going back to school, probably in January or February.

Roger Boren: Okay: hobbies. I know particular things that you were interested in; you mentioned a couple of those before we started. But would you mind telling us what kind of things you do to vacate your mind, so to speak . . .

John Zebrowski: Well, unfortunately . . .

Roger Boren: . . . for recreation?

John Zebrowski: lately – in fact, it's something I've been thinking about lately – I've been doing too much work and not enough play, so I've got to start resuscitating some of my hobbies. But I like to do things like hiking and bicycle riding and kayaking, and that type of thing. I've gone on a couple of nice hikes recently. I went on a – I guess it was like about a year or so ago with a buddy of mine and my son and his girlfriend – we went and hiked the West Highland Way through the Highlands of Scotland. And that was really quite interesting. You meet people along the way, you go through these little towns, you stay in little bed-and-breakfast kind of places along the way. That was a lot of fun.

Roger Boren: Besides recreation and, say, reading and the like, are there other special interests that you have?

John Zebrowski: Well, lately I've been making an effort to try to get back in good physical shape. So I've been trying to exercise, and that's been taking up some time. But I'm only a couple of months into that. I'm making some progress, but I got a little bit out of shape by working too much.

Roger Boren: I meant to ask you before: we spoke of Governor Deukmejian. Were you appointed, then, to the Court of Appeal by a different Governor or by Governor Deukmejian?

John Zebrowski: I was appointed to the Court of Appeal by Governor Wilson.

Roger Boren: I thought so.

John Zebrowski: Yeah, yeah.

Roger Boren: So if you had to look back on it, what was the most satisfying of all your career?

John Zebrowski: You mean of the different segments of the career? 38:46

Roger Boren: Yeah, all the segments, you look at 'em, what do you think? I mean now, other one?

John Zebrowski: Well, you know, it's kind of hard to say, but I'll say that I found enjoyable parts of each one of them. And the thing I find is that when you . . . you know, as you go through life you tend to come to sort of break points where you make a big change from one thing to another, and it's fairly hard to do that without having some negatives to it.

Roger Boren: Yeah.

John Zebrowski: There's always pluses and minuses. So what you have to hope is that the pluses outweigh the minuses. And I think that as I've progressed through different stages of my career, the pluses have always outweighed the minuses. But there are things I miss about it. I mean, on the trial court, for example, I really thought it was interesting watching a trial develop. I mean, it was almost like . . . .

Roger Boren: Well, it's like a drama.

John Zebrowski: Right. If you understand a little bit of the "Inside Baseball" – what's going on – watching it develop is just like going to a play or something and you're seeing the plot develop and so forth. And I really found that very interesting.

Roger Boren: Would you mind telling us what you thought were probably the pluses of being a justice on the Court of Appeal?

John Zebrowski: Well, the good thing about being on the Court of Appeal was that you had an opportunity to try to make proper rulings that fit the law that you were dealing with in your particular case into all the rest of the law, so that all the law fit together well and so you had a good body of law that would be beneficial to the public. And it took a lot of thought and a lot of breadth of view of what you were dealing with. And if it's done well, I think it really has a great public benefit. And if it's done badly, it can cause problems.

Roger Boren: Would you have any advice for those who might not even be to the point of seeking a legal career but if they were thinking about that and also thinking about a judicial career, what they would do along the way to have a career as an appellate justice?

John Zebrowski: Well, I think probably the first thing I would tell them is that it's not exactly the kind of thing you try to make as your primary objective, because it's just so hit-and-miss and chance and who you meet and who you talk to and what happens and so forth. It's not the kind of thing that you can really plan for in the sense of it's a goal that you can attain just by your own effort. I mean, a lot of it is good fortune and other things have 41:07

to fall into place. But basically if you want to become an appellate justice, I think then what you need to do is you need to just develop a reputation as somebody that thinks things over, doesn't show any partiality or any particular point of view, but tries to apply the law that was created by our democratic process and not try to invent new things or fight against something you might not like. I mean, there are a lot of cases where if I had been the emperor I would have had a different rule of law, but I wasn't, and that wasn't what I could do, and whatever the rule of law was that's what you apply.

Roger Boren: What do you think about just *stare decisis* in general – the idea of precedent and the law – because it's been developed from English common law?

John Zebrowski: Well, I think you have to have a fairly strong thread of that because if it's a system of law then people have to know what the law is. It's not a system of law if nobody knows what it is. It's . . . . If nobody can tell what the law is, that's just a system of somebody being in control and making a decision about it. But the whole idea of law is that people can know what the law is to some degree – some reasonable degree – and they can try to conform their conduct to the law; they can try to act within the law. So you have to have some *stare decisis*. On the other hand, we know that sometimes, with hindsight benefits of another decade or 15, 20 years goes by, you can see that maybe somebody decided something in a way that was not correct, and once in a while it has to be changed. But if you do that too much, of course, then you erode the whole idea of a system of law. So . . . .

Roger Boren: Well, how do you feel about the interplay – especially at the appellate level – of the precedential law, discernment of some of the forces that are sometimes . . . work on a particular case that aren't necessarily stated on the cold record, and common sense. Any thoughts along those lines about how those relate?

John Zebrowski: Well, you get a lot of people criticizing what the Legislature does, for example. But on the other hand, I mean, the Legislature's generally applying some brand of common sense. They have something they're trying to accomplish. And you can debate what technique they're using to try to accomplish it, but I think common sense is a good indicator of the meaning of a statute, for example, because people generally don't intentionally create a statute that makes no sense. So common sense does have a large . . . . It is a large component in your decision making. But on the other hand, you can't use what somebody might think is common sense to rule directly the opposite to what something says. I mean, your first step is to look and see what the language is. Now, if the language is clear, then that's the way you apply it. Now, if the language is subject to a little bit of nuance or differing 43:51

interpretations, all common sense comes in with regard to what was intended by it.

Roger Boren: My last question that I really have for you – and that doesn't mean you can't also interject something you think ought to be mentioned here, but – was the one that I alluded to earlier, which is in your lifetime, have there been particular role models or mentors or persons of inspiration or ideal that kind of influenced your lifetime and your current choices?

John Zebrowski: Well, anytime I think of that, the person who always comes to mind is the guy that was my athletic coach in . . . starting in junior high school and going on from there. And I think he just retired recently. He came to coach us when we were like about 12 and he was like 22; he'd just been out of . . . just got out of college with his phys ed degree and was sent down to be our coach. So at the time, of course, he seemed like he was way older than us; nowadays it doesn't seem like much 'cause it's only 10 years.

But when I go back to Pennsylvania I still go and visit him. And a couple of years ago, a bunch of the guys that are still living back around in Pennsylvania there arranged a surprise party for him for his 70th birthday. And so we got about 80 or 90 guys back there, and they rented a pavilion at the baseball stadium. It's way out in left field and it's up pretty high, and there are some seats in front looking out at the field, but then behind there is a big area where they have a barbecue set up, and they do all this barbecuing and you have kind of like a picnic kind of a thing up there. So they rented this place and they had this big dinner all set up up there. And so we had about 80 guys gathered up there. And he was coming to the game with his son and grandson, and they just told him they were taking him to a baseball game; they didn't tell him that he was going to have 80 of his guys that he had coached waiting there for him. So it was kind of funny, because as he comes walking up, he's looking and he sees all these guys standing there, and he comes walking closer and then he starts recognizing a few people, and so we go up and start shaking his hand and all that sort of thing. And we give him the microphone, and the first thing he says is, "I'm comin' to this baseball game, and my son and grandson here are bringing me way out here to these really lousy seats out in left field, and I'm thinking, "Why are we going out to these really lousy seats way out here in left field? The game's not even sold out; surely there are better seats available. And then I see all these guys standing out there, and I'm wondering why are all these guys out here in the really lousy seats in left field?" And we're all there to . . . of course, to greet him. It was quite a . . . you know, quite a tribute to him, I find. And I thought it was really quite amazing. I mean, there was a guy that had a lot of impact on a lot of young lives over the years. I was in the first class that he coached, and then of course he'd been coaching ever since then. And 46:35

a lot of guys that I'd never even met until I went back to this sort of reunion type of thing. But he had a lot of impact on me.

Roger Boren: Well, what things or characteristics were there that he had that impacted you?

John Zebrowski: Well, he taught you to always do your best. You know – try your best, stick with it. If at first you don't succeed, try again. If you're having a problem with something, figure out how to get around it; don't blame it on somebody else. And it was just good . . . I think just good . . . .

Roger Boren: Good advice for life.

John Zebrowski: Yeah. Right. Yeah, I really thought so. And I just thought it was really quite surprising. I mean, a lot of people would say, "Well, here's a fellow in a . . . who was a small-town coach his whole life," but he's got hundreds of people out there that he had a big impact on. And maybe thousands, over 40 or 50 years of coaching.

Roger Boren: Well, thank you very much, Jack. I really appreciate it. Is there anything you'd like to add?

John Zebrowski: Well, just that I really enjoyed my time on the Court of Appeal. If . . . . You know, you never can control exactly how life goes. If it had gone a little differently, I might still be here.

Roger Boren: Yeah, that's what I thought. Well, thank you very much for coming.

John Zebrowski: Yeah. Good seeing you, Roger.

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